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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: MAR 2 9 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a jewelry wholesale and retail business. It seeks to permanently employ the beneficiary in the United States as a finance manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).[1]

Section 203(b)(2) of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

In a decision dated January 16, 2009, the Director denied the petition on the ground that the beneficiary is not eligible for classification as an advanced degree professional. In particular, the Director found that the beneficiary's academic degrees and work experience in Pakistan are not equivalent to either a U.S. advanced degree or a U.S. baccalaureate degree and five years of progressive experience in the specialty.

The appeal is properly filed and timely and makes specific allegations of error in law or fact. The procedural history of this case is documented in the record and incorporated into the decision.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

After reviewing the evidence of record the AAO determined that additional documentation was needed from the petitioner before a decision could be rendered on the appeal. Accordingly, the AAO issued a Request for Evidence (RFE) on December 28, 2011. The petitioner was advised to submit additional evidence of the U.S. equivalency of the beneficiary's two degrees from Pakistan,

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[1] The ETA Form 9089 was filed with the DOL on March 5, 2008 (the priority date), and certified by the DOL on May 8, 2008.

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

as well as additional evidence of the beneficiary's claimed work experience in Pakistan and the petitioner's ability to pay the proffered wage. The petitioner responded with a brief from counsel and additional documentation addressing the subjects raised in the RFE.

The issues on appeal, therefore, are the following:

- Has the petitioner established its ability to pay the proffered wage of the finance manager position from the priority date (March 5, 2008) up to the present?

- Does the beneficiary have the education and/or experience specified on the labor certification to be eligible for classification as an advanced degree professional and to qualify for the proffered position?

Ability to Pay the Proffered Wage

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date onward. *See* 8 C.F.R. § 204.5(d). The priority date is the date the labor certification application was accepted for processing by the DOL. *Id.*[3] As previously discussed, the priority date in this case is March 5, 2008. The "offered wage" of the finance manager position, as stated In Box G of the ETA Form 9089, is $89,606 per year.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089 establishes a priority date for any immigrant petition later based on that document, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, U.S. Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning

[3] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad.

business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage between the priority date and the present, USCIS first examines whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In this case, there is no evidence that the beneficiary has ever worked for the petitioner. Thus, the petitioner cannot establish its continuing ability to pay the proffered wage from the priority date up to the present based on its actual compensation to the beneficiary over the years.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS will examine the net income figures reflected on the petitioner's federal income tax returns, without consideration of depreciation or other expenses. *See River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F.Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *See Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages to all of its employees in excess of the proffered wage to the beneficiary is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

> The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it [sic] represent amounts available to pay wages.

> We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 118. "[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support." *Chi-Feng Chang* at 537 (emphasis added). Consistent with its prior adjudications, and backed by federal court rulings, the AAO will not consider depreciation in examining the petitioner's net income.

The record includes copies of the petitioner's federal income tax returns (Forms 1120S) for the years 2008-2010. These returns show the following figures for net income.[4]

2008:	$329,776
2009:	$510,000
2010:	$337,864

Based on the foregoing net income figures, the AAO determines that the petitioner has established its ability to pay the proffered wage from the priority date (March 5, 2008) up to the present.[5]

Education and Experience Requirements

To be eligible for approval as an advanced degree professional, the beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).

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[4] Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. When an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, however, they are reported on Schedule K. If there are relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 18 of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (indicating that the Schedule K is a summary schedule of all shareholders' shares of the corporation's income, deductions, credits, etc.).

[5] As another alternate means of determining the petitioner's ability to pay the proffered wage, prescribed in 8 C.F.R. § 204.5(g)(2), USCIS has reviewed the petitioner's net current assets recorded on its federal income tax returns. Net current assets are the difference between the petitioner's current assets and current liabilities. For an S corporation, like the petitioner, year-end current assets are shown on Schedule L, lines 1 through 6, and year-end current liabilities are shown on lines 16 through 18. In this case, the petitioner's end-of-year net current assets in 2008, 2009, and 2010 were well above the proffered wage. The AAO concludes, therefore, that the petitioner has also established its ability to pay the proffered wage from the priority date up to the present based on its net current assets over the years.

1. Is the Beneficiary Eligible for the Classification Sought?

As previously discussed, the ETA Form 9089 in this case is certified by the DOL. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act, 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).[6] This decision involved a petition filed under 8 U.S.C. §1153(a)(3) of the Act, as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative

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[6] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (INS, or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[7] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2).

The degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree

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[7] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).[8]

The documentation of record includes copies of diplomas and transcripts showing that the beneficiary was awarded the following educational degrees in Pakistan:

- a Bachelor of Science from the University of the Punjab after completion of a two-year degree program in 1989.

- A Master of Public Administration (MPA) from Quaid-i-Azam University after completion of a two-year degree program in 1992.

The record also includes evidence of the beneficiary's work experience in Pakistan – in particular, a letter from the chairman of the Multi-purpose Jubilee Cooperative Society, Inc. in Islamabad, dated January 26, 2012. In this letter the chairman states that the beneficiary was employed as finance manager from January 1997 to February 2000 and as senior finance manager from July 2001 to March 2004, and lists the job duties the beneficiary fulfilled in each position.

In his decision denying the petition the Director stated that the beneficiary was not eligible for classification as an advanced degree professional because she did not have either a foreign equivalent degree to a U.S. advanced degree or a foreign equivalent degree to a U.S. baccalaureate degree plus five years of progressive experience in the specialty. Since the beneficiary's two Pakistani degrees were each two years in length, neither one constituted a "foreign equivalent degree" to a four-year bachelor's degree in the United States. Nor did the beneficiary's combination of a two-year bachelor's degree and a two-year master's degree in Pakistan constitute a single "foreign equivalent degree" to a U.S. baccalaureate degree.

On appeal counsel does not claim that the beneficiary's education is equivalent to a U.S. advanced degree, but rather a U.S. baccalaureate degree. Counsel asserts that the regulatory specification of a "foreign equivalent degree" does not require a single foreign degree, but may also be satisfied with two degrees as long as they are in the same field. According to counsel, the beneficiary's two degrees satisfy this condition. The AAO does not agree.

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[8] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

Counsel has submitted a copy of a letter from [redacted] of the INS Office of Adjudications to counsel for the petitioner in another case, dated January 7, 2003, in which [redacted] expressed his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). In his letter [redacted] expressed his opinion that multiple degrees may be considered equivalent to a U.S. bachelor's degree, providing a "proper credentials evaluation service" makes this finding. Private discussions and correspondence solicited to obtain advice from USCIS are not binding on the AAO or other USCIS adjudicators and do not have the force of law. *See Matter of Izummi,* 22 I&N 169, 196-197 (Comm'r 1968); *see also* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).[9]

Counsel refers to a federal district court decision in *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp. 2d 1174 (D. Or. 2005), which found that USCIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993); *see also* footnote 9. As legal support for its determination, the district court in *Grace Korean* cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a).

Counsel has also submitted reports from two academic credentials evaluation services – [redacted] of Baltimore, Maryland, and [redacted] of Westminster, Colorado. According to [redacted], the beneficiary's two-year Bachelor of Science from the University of the Punjab combined with her two-year Master of Public Administration from Quaid-i-Azam University are equivalent to a Bachelor's Degree in Business Administration from a U.S. college or university. Both evaluations are flawed for the purposes of this immigrant petition for an advanced degree professional because they combine the beneficiary's two degrees in making their equivalency determinations. Neither of the beneficiary's two-year degrees from Pakistan, standing alone, is a "foreign equivalent degree" to a four-year United States baccalaureate degree (any more than a three-year degree would be). *See Matter of Shah.* Nor do the two Pakistani degrees totaling four years of education constitute a single "foreign equivalent degree" to a United States baccalaureate degree, as required in the regulation at 8 C.F.R. § 204.5(k)(2).

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[9] The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.,* 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS,* 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd,* 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated).

Moreover, the beneficiary's second degree, from Quaid-i-Azam University, is in the field of public administration, not business administration. While Silvergate, in particular, claims that the two fields are closely related, they are obviously not the same. Thus, even if the beneficiary's degree from Quaid-i-Azam University were a four-year degree, the conclusions of [redacted] that a bachelor's degree in public administration from a Pakistani university is **equivalent** to a bachelor's degree in business administration from a U.S. university (or college) would be strained at best.

Evaluations of a person's foreign education by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *see also Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For the reasons discussed above, the AAO determines that the Silvergate and FCI evaluations have little or no probative value as evidence that the beneficiary's educational degrees from Pakistan, either alone or in combination, constitute a foreign equivalent degree to a four-year baccalaureate in business administration in the United States.

As another resource on the U.S. equivalency of foreign degrees, the AAO has consulted the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/about/. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://aacraoedge.aacrao.org/register/. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[10] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[11]

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[10] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[11] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

According to EDGE, a Bachelor of Science degree in Pakistan is awarded upon completion of two to three years of tertiary study beyond the Higher Secondary Certificate (equivalent to a U.S. high school degree). It is comparable to two to three years of university study in the United States. Since the beneficiary's bachelor's degree program was evidently two years in length, the degree is comparable to two years of university study in the United States in the field of science.

As for the beneficiary's Master of Public Administration, EDGE does not have information about that specific field of study in Pakistan. It does have information about two-year master's degrees in arts, science, or commerce, stating that these degrees are awarded upon completion of two years of study beyond the bachelor's degree. According to EDGE, a two-year master of arts, science, or commerce in Pakistan is comparable to a bachelor's degree in the United States.

For the purposes of this petition, however, the regulation at 8 C.F.R. §§ 204.5(k)(2) clearly states that equivalency to a U.S. baccalaureate degree means "a foreign equivalent degree" – not a combination of degrees or degrees and employment experience. Although 8 C.F.R. § 204.5(k)(2) permits a combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision in the regulations for immigrant visa petitions allowing for a combination of academic degrees, other credentials, and work experience to be considered the equivalent of a U.S. baccalaureate degree. As previously mentioned, a bachelor's degree in the United States is generally found to require four years of education. *See Matter of Shah.*

For all of the reasons discussed above, the petitioner has failed to establish that the beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree in business administration. Therefore, she is not eligible for preference visa classification under section 203(b)(2) of the Act and 8 C.F.R. § 204.5(k)(2). On this basis alone, the petition cannot be approved.

2. Is the Beneficiary Qualified for the Job Offered?

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien,

> and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

The key to determining the job qualifications is found in ETA Form 9089, Part H. This part of the application for alien labor certification describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this case, the petitioner specified the educational and experience requirements for the position of finance manager as follows in Part H of ETA Form 9089:

- The minimum educational requirement is a master's degree in business administration (lines 4 and 4-B).
- No alternate field of study is acceptable (line 7).
- An alternate combination of education and experience is acceptable – namely, a bachelor's degree (in business administration) and five years of work experience (lines 8, 8-A, and 8-C).
- A foreign educational equivalent is acceptable (line 9).
- Experience in an alternate occupation is not acceptable (line 10).

The beneficiary does not have a U.S. master's degree in business administration, or a foreign equivalent degree to a master's in business administration. Therefore, she does not qualify for the proffered position based on the educational requirements set forth in Part H, lines 4, 4-B, and 9 of

the ETA Form 9089. While the AAO is persuaded by the evidence of record that the beneficiary has five years of qualifying experience which meets the requirement of Part H, line 8-C, the beneficiary does not have a U.S. bachelor's degree in business administration or, for the reasons previously discussed, a foreign equivalent degree to a U.S. bachelor's degree in business administration. Therefore, the beneficiary does not qualify for the proffered position based on the alternate combination of education and experience set forth in Part H, lines 8-A, 8-C, and 9 of the ETA Form 9089. Furthermore, the petitioner stated on line 7 of Part H that no alternate field of study was acceptable. Thus, even if the AAO were to accept, *arguendo*, that the beneficiary's two-year Master of Public Administration in Pakistan was equivalent to a U.S. bachelor's degree, it still would not be in the requisite field – business administration – specified on line 4-B of the labor certification.

Based on the foregoing analysis of the labor certification and the beneficiary's qualifications, the AAO determines that the petitioner has failed to establish that the beneficiary has the requisite education, or combination of education and experience, as specified on the labor certification, to qualify for the proffered position. For this reason as well, the petition cannot be approved.

Conclusion

The beneficiary does not have a U.S. bachelor's degree in business administration, or a foreign equivalent degree, and thus does not qualify for preference visa classification under section 203(b)(2) of the Act. Nor does the beneficiary meet the job requirements on the labor certification. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.